

**STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION**

**IN THE MATTER OF THE APPLICATION
OF THE NEW MEXICO OIL CONSERVATION
DIVISION TO CONSIDER THE PROPOSED RULES TO
REGULATE THE VENTING AND FLARING OF
NATURAL GAS FROM OIL AND NATURAL GAS
PRODUCTION AND GATHERING FACILITIES**

**CASE NO. 21528
ORDER NO. R-21540-C**

ORDER OF THE COMMISSION

THIS MATTER came before the New Mexico Oil Conservation Commission (“Commission”) on the Climate Advocates’ Motion for Opportunity to Present Rebuttal Testimony and To File Post-Hearing Statements filed on November 3, 2020 by Conservation Voters New Mexico, San Juan Citizens Alliance, and Earthworks (collectively referred to herein as “Climate Advocates”). The Commission heard the Motion at the November 4, 2020 Meeting.

In their Motion, Climate Advocates argue that, given the complexity of the issues underlying the proposed rules to be considered at the January 2021 Rulemaking Hearing, the importance of the proposed rules to New Mexico and the general public interest, fairness mandates the following:

- (1) All Parties be given the opportunity to present rebuttal testimony in support of each party’s respective case to aid the Commission in making a fully-informed decision on the issues;
- (2) All Parties be given the opportunity to submit post-hearing briefs after the release of the Rulemaking Hearing transcript, again to ensure the Commission is fully-informed about each Party’s position(s);

- (3) The Commission impose a post-hearing briefing schedule on all Parties, with the deadline for submission of such statements being fourteen (14) calendar days after the release of the Rulemaking hearing transcript.

At the November 2020 Commission meeting, Climate Advocates recognized that, while the Commission’s rules permit rebuttal testimony on a case-by-case basis, such rebuttal testimony should be allowed as a matter-of-course. *See* November 4, 2020 Hr’g Tr. 15:17-20, 22; *See also* NMAC 19.15.3.11(B). The New Mexico Oil and Gas Association (“NMOGA”) and the Oil Conservation Division (“Division”) opposed rebuttal testimony as a matter-of-course and argued that request for post-hearing briefing was not yet ripe for consideration. November 4, 2020 Hr’g Tr. 19:4 to 22:9, 22:12 to 23:24. Climate Advocates responded to the concerns raised by the NMOGA and the Division by arguing that the relief sought in the Motion does not curtail the Commission’s power to limit rebuttal testimony. *Id.* at 25:25 to 26:7. Concerning post-hearing briefing, Climate Advocates reiterated the argument that such briefing would be beneficial to the Commission’s deliberations and proposed a procedure to ensure expedited briefing while allowing the Parties to review all evidence from the Rulemaking hearing. *Id.* at 26:8 to 27:22.

Findings

The Commission, having reviewed Climate Advocates’ motion, heard argument by parties, and otherwise being fully advised in the matter, makes the following findings:

- (1) That NMAC 19.15.3.11(B) addresses the issue of rebuttal testimony at rulemaking hearings by permitting such testimony on a case-by-case basis. November 4, 2020 Hr’g Tr. 19:4 to 53:14 to 54:24;
- (2) That NMAC 19.15.3.11(B) provides the Parties with the ability to proffer rebuttal testimony if or when rebuttal is called for. *Id.*;

(3) The Motion's request for leave to file post-hearing briefs is premature and will remain so until the close of evidence in this matter. *Id.* at 54:25 to 56:13.

For the foregoing reasons, the Chair finds that the Motion is not well taken and is hereby DENIED.

IT IS SO ORDERED.

DONE at Santa Fe, New Mexico, on this 22nd day of December 2020.

**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION**



ADRIENNE SANDOVAL, M.E., CHAIR